

DOCKET FILE COPY ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Emergency Petition of )  
Bell Atlantic-West Virginia for )  
Authorization to End West Virginia's )  
Bandwidth Crisis )

CC Docket No. 98-11  
NSD-L-98-99

RECEIVED

AUG 10 1998

TO: The Commission

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

OPPOSITION OF THE  
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby opposes the "Emergency Request of Bell Atlantic-West Virginia for Interim Relief" [hereinafter "Petition"] submitted by Bell Atlantic-West Virginia ("Bell Atlantic") on July 22, 1998 in the above-referenced docket (File No. NSD-L-98-99). The Petition (at 2) requests "emergency" authority to provide high-capacity links between the two LATAs in West Virginia, and between those LATAs and Internet Access Points ("IAPs") in Pittsburgh and Richmond, on the ground that a "general interLATA bandwidth famine . . . threatens the State's economic future." Bell Atlantic asks the Commission to use Section 706 of the Communications Act to authorize it to provide these interLATA links, or, alternatively, to modify LATA boundaries to render these links intraLATA rather than interLATA in nature.

The Commission should deny the Petition summarily. As we show below, the Commission confirmed last Thursday that it may not forbear from applying the

Noted for review rec'd  
10/1/98

OKS

prohibition on Bell Atlantic's provision of in-region interLATA services under Section 271. Nor can Bell Atlantic's requested relief be justified as a LATA boundary modification. Unlike Bell Atlantic's request, all previous LATA boundary modifications have been carefully limited to avoid compromising Section 271, which provides that the Bell Companies may not enter the in-region interLATA market until they have opened their local markets to competitive entry and satisfied other pro-competitive standards. Further, the FCC has sought comment in CC Docket No. 98-147 on whether LATA boundary modifications could be used to facilitate the offering of advanced telecommunications services, and it would be improper to grant such relief to Bell Atlantic while that issue is still pending before the Commission in a rulemaking proceeding.

There is no bandwidth "famine" or other emergency justifying extraordinary Commission action here. Both Internet Access Points ("IAPs") operated by the State of West Virginia -- one in Morgantown and another in Charleston -- currently are connected by high-speed links to the Internet backbone network. Petition, Att. 1. While Bell Atlantic may have failed to live up to its contractual obligations to expand the capacity of the Morgantown-Pittsburgh link, it is CompTel's understanding that there is available capacity on that route, and that more capacity will come on-line in the near future. The State of West Virginia could have awarded the contract (and still can do so) to entities capable of securing the provision of the necessary interLATA capacity in a timely fashion. The Commission should not permit Bell Atlantic to bootstrap its own failure to fulfill its contractual obligations to the State of West Virginia into a waiver of critical

statutory provisions designed to promote competitive entry into the local telecommunications market.

**I. THE COMMISSION DOES NOT HAVE THE AUTHORITY TO FORBEAR FROM APPLYING SECTION 271**

The Petition asks the Commission to allow Bell Atlantic to provide high capacity links between the two LATAs within West Virginia, and between West Virginia and two IAPs in Pittsburgh and Richmond, pursuant to Section 706 of the Communications Act. In effect, Bell Atlantic is asking the Commission to forbear from applying the minimum standards of Section 271 of the Communications Act to its provision of interLATA services. As CompTel previously has explained in detail in this and related dockets, the Commission does not have the authority to forbear from applying Section 271 unless a BOC has complied with certain standards. *See, e.g.,* Opposition of the Competitive Telecommunications Association, CC Docket Nos. 98-11, 98-26, 98-36 (filed April 6, 1998), at 9-14. Section 271 establishes the conditions upon which a BOC may provide in-region interLATA services, and includes a requirement that the BOC “fully implement[]” a 14-point “competitive checklist” with regard to its operations in the relevant state. Indeed, the Commission expressly affirmed just last Thursday that it does not have the statutory authority to forbear from Section 271 prior to its full implementation. *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-11, 98-26, 98-32, 98-78, 98-91, 98-147 & CCB/CPD No. 98-15, FCC 98-188, rel. Aug. 7, 1998 at ¶¶ 69-79 (Memorandum Opinion and Order and Notice of Proposed Rulemaking) [hereinafter “*MO&O/NPRM*”].

Thus, because it is undisputed that Bell Atlantic has not complied with the requirements of Section 271 in West Virginia, the Commission must deny its request.

## **II. THE REQUEST FOR LATA BOUNDARY MODIFICATIONS IS INCONSISTENT WITH AGENCY PRACTICE AND WOULD IMPROPERLY UNDERMINE SECTION 271**

In the alternative, Bell Atlantic has requested that the Commission disregard the requirements of Section 271 and grant the requested relief by modifying Bell Atlantic's LATA boundaries pursuant to Section 3(25) of the Act. However, Bell Atlantic's reliance on Section 3(25) is misplaced. The Commission has granted LATA boundary modifications only for certain "limited purposes" that do *not* include the purposes expressed and implied in the Petition. *In the Matter of Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service at Various Locations*, 12 FCC Rcd 10646, ¶ 16 (1997) [hereinafter "ELCS Modification Order"]. In the ELCS Modification Order, which Bell Atlantic references as support for its Section 3(25) argument, the FCC allowed the various BOCs to modify their LATA boundaries only to ensure that *local* telephone service would be provided to certain communities in a timely fashion. Explaining its decision, the Commission emphasized that its decision was based on the "small number of access lines involved for each of the proposed [Expanded Local Calling Service] areas," the fact that only "traditional local service" was involved, and the fact that "the small volume of traffic would seem inconsequential to any interexchange carrier." *Id.*

More importantly, throughout the ELCS Modification Order the Commission stressed the importance of the safeguards established by Section 271. Indeed, the

Commission noted that its decision was consistent with Section 271 because, since the LATA boundaries were being modified only for the purpose of providing traditional local services, it was unlikely that the Order would lead to “competitive abuses” by the BOCs, or that the BOCs’ provision of ELCS service would “reduce a BOC’s motivation to open its own market to competition.” *Id.* at ¶ 14. In its decision last week, the Commission emphasized that it would not, and indeed could not, grant requests for “large-scale changes in LATA boundaries” that would “effectively eviscerate” the pro-competitive incentives established by Congress for opening the local market. *MO&O/NPRM* at ¶¶ 80-82. Bell Atlantic’s request that the Commission eliminate LATA boundaries for advanced telecommunications services is precisely the type of modification that FCC has held it does not have authority to implement.

Lastly, CompTel would note that the Commission expressly has sought comment in CC Docket No. 98-147 on whether it would be permissible or wise to grant LATA boundary modifications to encourage the deployment of advanced services in certain limited circumstances. *MO&O/NPRM* at ¶¶ 190-96. It is the Commission’s well-established practice not to grant relief while the same or similar issue is pending before the Commission in a rulemaking proceeding. *See, e.g., Time Warner Inc. Petition for Special Relief Requesting Waiver of 47 C.F.R. § 76.501*, Memorandum Opinion and Order, 12 FCC Rcd 15300, ¶ 17 (1997) (it is “premature to grant a conditional waiver pending the outcome of a rulemaking”). Accordingly, Commission action with regard to Bell Atlantic’s LATA boundary modification request at this time would be premature.

## CONCLUSION

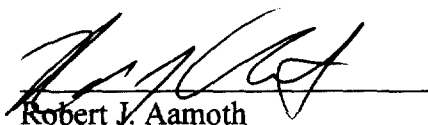
For the foregoing reasons, CompTel submits that the Commission should deny the Petition.

Respectfully submitted,

COMPETITIVE TELECOMMUNICATIONS  
ASSOCIATION

Genevieve Morelli  
Executive Vice President  
and General Counsel  
COMPETITIVE TELECOMMUNICATIONS  
ASSOCIATION  
1900 M Street, N.W., Suite 800  
Washington, D.C. 20036

August 10, 1998

By:   
Robert J. Aamoth  
Rebekah J. Kinnett  
KELLEY DRYE & WARREN LLP  
1200 19th Street, N.W.  
Suite 500  
Washington, D.C. 20036  
(202) 955-9600

Its Attorneys

## CERTIFICATE OF SERVICE

I, Marlene Borack, hereby certify that on this 10th day of August, 1998, I caused true and correct copies of the OPPOSITION OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION to be served via U.S. mail, postage prepaid, upon those persons listed below.

David B. Frost  
Vice President and General Counsel  
Bell Atlantic – West Virginia, Inc.  
1500 MacCorkle Avenue, S.E.  
Charleston, West Virginia 25314

Anna Gomez\*\*  
Common Carrier Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 235-B  
Washington, D.C. 20554

Robert H. Griffen  
Bell Atlantic  
1320 North Court House Road  
8<sup>th</sup> Floor  
Arlington, Virginia 22201

Al McCloud\*\*  
Common Carrier Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 210-M  
Washington, D.C. 20554

Kathryn Brown, Chief\*\*  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, D.C. 20554

Paul Gallant\*\*  
Federal Communications Commission  
1919 M Street, N.W., Room 826  
Washington, DC 20554

Tom Power\*\*  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, DC 20554

Kyle Dixon\*\*  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, DC 20554

Kevin Martin\*\*  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, DC 20554

International Transcription Service\*\*  
1231 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20554

James Casserly\*\*  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, DC 20554

  
Marlene Borack

\*\* Via Hand Delivery